

disclosures because it has not fully completed its investigation of the case, it challenges the sufficiency of another entity's disclosures, or that another entity has not yet made its disclosures. All disclosures under this section must be accompanied by a certification (by sworn affidavit) that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification.

(d) The duty of disclosure under this section is continuing, and any information or documents that are subsequently developed or obtained must be disclosed within fourteen (14) days.

(e)(1) The presiding officer may impose sanctions, including dismissal of specific contentions, dismissal of the adjudication, denial or dismissal of the application or proposed action, or the use of the discovery provisions in subpart G of this part against the offending party, for the offending party's continuing unexcused failure to make the disclosures required by this section.

(2) The presiding officer may impose sanctions on a party that fails to provide any document or witness name required to be disclosed under this section, unless the party demonstrates good cause for its failure to make the disclosure required by this section. A sanction that may be imposed by the presiding officer is prohibiting the admission into evidence of documents or testimony of the witness proffered by the offending party in support of its case.

(f) The disclosures required by this section constitute the sole discovery permitted for NRC proceedings under this part unless there is further provision for discovery under the specific subpart under which the hearing will be conducted or unless the Commission provides otherwise in a specific proceeding.

**§ 2.337 Evidence at a hearing.**

(a) Admissibility. Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

(b) Objections. An objection to evidence must briefly state the grounds of objection. The transcript must include the objection, the grounds, and the ruling. Exception to an adverse ruling is preserved without notation on-the-record.

(c) Offer of proof. An offer of proof, made in connection with an objection to a ruling of the presiding officer excluding or rejecting proffered oral testimony, must consist of a statement of the substance of the proffered evidence. If the excluded evidence is in written form, a copy must be marked for identification. Rejected exhibits, adequately marked for identification, must be retained in the record.

(d) Exhibits. A written exhibit will not be received in evidence unless the original and two copies are offered and a copy is furnished to each party, or the parties have been previously furnished with copies or the presiding officer directs otherwise. The presiding officer may permit a party to replace with a true copy an original document admitted in evidence.

(e) Official record. An official record of a government agency or entry in an official record may be evidenced by an official publication or by a copy attested by the officer having legal custody of the record and accompanied by a certificate of his custody.

(f) Official notice. (1) The Commission or the presiding officer may take official notice of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body. Each fact officially noticed under this paragraph must be specified in the record with sufficient particularity to advise the parties of the matters which have been noticed or brought to the attention of the parties before final decision and each party adversely affected by the decision shall be given opportunity to controvert the fact.

(2) If a decision is stated to rest in whole or in part on official notice of a fact which the parties have not had a prior opportunity to controvert, a party may controvert the fact by filing an appeal from an initial decision or a petition for reconsideration of a final decision. The appeal must clearly and

concisely set forth the information relied upon to controvert the fact.

(g) Proceedings involving applications—(1) Facility construction permits. In a proceeding involving an application for construction permit for a production or utilization facility, the NRC staff shall offer into evidence any report submitted by the ACRS in the proceeding in compliance with section 182(b) of the Act, any safety evaluation prepared by the NRC staff, and any environmental impact statement prepared in the proceeding under subpart A of part 51 of this chapter by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, or his or her designee.

(2) Other applications where the NRC staff is a party. In a proceeding involving an application for other than a construction permit for a production or utilization facility, the NRC staff shall offer into evidence:

(i) Any report submitted by the ACRS in the proceeding in compliance with section 182(b) of the Act;

(ii) At the discretion of the NRC staff, a safety evaluation prepared by the NRC staff and/or NRC staff testimony and evidence on the contention/controverted matter prepared in advance of the completion of the safety evaluation;

(iii) Any NRC staff statement of position on the contention/controverted matter provided to the presiding officer under §§ 2.1202(a); and

(iv) Any environmental impact statement or environmental assessment prepared in the proceeding under subpart A of part 51 of this chapter by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, or his or her designee if there is any, but only if there are contentions/controverted matters with respect to the adequacy of the environmental impact statement or environmental assessment.

(3) Other applications where the NRC staff is not a party. In a proceeding involving an application for other than a construction permit for a production or utilization facility, the NRC staff shall offer into evidence, and (with the exception of an ACRS report) provide one or more sponsoring witnesses, for:

(i) Any report submitted by the ACRS in the proceeding in compliance with section 182(b) of the Act;

(ii) At the discretion of the NRC staff, a safety evaluation prepared by the NRC staff and/or NRC staff testimony and evidence on the contention/controverted matter prepared in advance of the completion of the safety evaluation;

(iii) Any NRC staff statement of position on the contention/controverted matter under § 2.1202(a); and

(iv) Any environmental impact statement or environmental assessment prepared in the proceeding under subpart A of part 51 of this chapter by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, or his or her designee if there is any, but only if there are contentions/controverted matters with respect to the adequacy of the environmental impact statement or environmental assessment.

#### **§ 2.338 Settlement of issues; alternative dispute resolution.**

The fair and reasonable settlement and resolution of issues proposed for litigation in proceedings subject to this part is encouraged. Parties are encouraged to employ various methods of alternative dispute resolution to address the issues without the need for litigation in proceedings subject to this part.

(a) Availability. The parties shall have the opportunity to submit a proposed settlement of some or all issues to the Commission or presiding officer, as appropriate, or submit a request for alternative dispute resolution under paragraph (b) of this section.

(b) Settlement judge; alternative dispute resolution. (1) The presiding officer, upon joint motion of the parties, may request the Chief Administrative Judge to appoint a Settlement Judge to conduct settlement negotiations or remit the proceeding to alternative dispute resolution as the Commission may provide or to which the parties may agree. The order appointing the Settlement Judge may confine the scope of settlement negotiations to specified issues. The order must direct the Settlement Judge to report to the Chief Administrative Judge at specified time periods.